

U.S. DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

05 - 11166 EFH

CIVIL ACTION NO.

HARTFORD FIRE INSURANCE
COMPANY,

MAGISTRATE JUDGE *Dein*

Plaintiff,

v.

TOWN OF WESTON,

Defendant

RECEIPT # 64743
AMOUNT \$ 50
SUMMONS ISSUED ye
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. fom
DATE 6/6/05

COMPLAINT FOR DECLARATORY RELIEF AND MONETARY JUDGMENT

Plaintiff, Hartford Fire Insurance Company ("Hartford") for its Complaint for Declaratory Relief and Monetary Judgment against Defendant, Town of Weston ("Weston") states:

PARTIES

1. Hartford is a Connecticut corporation which, among other things, is in the business of issuing surety bonds. Hartford's principal place of business is in Hartford Connecticut.

2. Weston is a town organized and existing under the laws of the Commonwealth of Massachusetts having lawful existence as a political subdivision of the Commonwealth of Massachusetts.

3. At all relevant times, Weston acted by and through the Weston School Committee and other officers and agents are duly authorized and appointed.

JURISDICTION

4. This Court has jurisdiction over this matter under 28 U.S.C. §1332, as Hartford has citizenship diverse from Weston, and the amount in controversy exceeds \$75,000.00 and pursuant to 29 U.S.C. §2201 because this is an action seeking, in part, a declaratory judgment and there is an actual controversy regarding the legal relations of the parties.

FACTS

5. On or about June 25, 2001, Jan Five Corporation d/b/a Alexandra Construction ("Alexandra" or "Principal") entered into a contract with Weston for the construction of a project known as Additions and Renovations to the Country and Woodland Schools in Weston, Massachusetts ("Project").

6. Weston furnished documents including, plans, specifications, general conditions, supplementary conditions and other documents ("Contract") for use by Alexandra for the Project.

7. Hartford, as surety and Alexandra, as principal, made, executed and delivered to Weston a Performance Bond No. 08BCSAV7773 as well as a Labor and Material Bond No. 08BCSAV7773 ("Payment Bond"), both bonds being dated June 25, 2001.

8. The penal sum of the Performance Bond is \$27,677,000.00 and the penal sum of the Payment Bond is \$27,677,000.00.

9. Alexandra commenced performance on the Project and during the course of the Project certain disputes arose between Weston and Alexandra.

10. As a result of the disputes between Weston and Alexandra, Weston terminated Alexandra's Contract with respect to the Project effective July 15, 2004.

11. Alexandra disputes the propriety of the termination.

12. Weston demanded that Hartford, as surety, arrange for completion of the Contract pursuant to the terms of the Performance Bond.

13. On November 11, 2004, with a reservation of rights by both Weston and Hartford, the parties executed a Takeover Agreement to arrange for work to be performed on the Project.

14. Weston understood that Alexandra would perform the work on the Project pursuant to the terms of the Takeover Agreement.

15. Hartford, as surety, began performance of work under the Takeover Agreement and completed a substantial portion of the work under the Takeover Agreement.

16. During the course of the performance of the work under the Takeover Agreement, disputes arose between Hartford and Weston concerning the scope of the work to be completed under the Takeover Agreement, the Contract and the obligations of the parties under the Takeover Agreement.

17. Weston terminated Hartford's right to proceed under the Takeover Agreement.

COUNT I – BREACH OF CONTRACT

18. Hartford hereby incorporates Paragraphs 1 through 17 above as if fully set forth herein.

19. Weston has breached the terms of the Contract on the Project, the Performance Bond and the Takeover Agreement by, among other things:

- (a) Refusing to remit due and owing Contract proceeds;
- (b) Refusing to process and pay for legitimate change order work;
- (c) Assessing both liquidated damages and actual damages contrary to established legal principles;
- (d) Refusing to approve or make payment of claims asserted by Alexandra.

20. Weston's actions constitute a material breach of the Contract, Performance Bond, and the Takeover Agreement.

21. All conditions precedent to maintain this action have been satisfied.

COUNT II

22. Hartford hereby incorporates Paragraphs 1 through 21 above as if fully set forth herein.

23. Weston, by its actions and/or omissions, required, requested and otherwise forced Hartford to arrange for the furnishing of labor, materials, equipment, supplies and other services to Weston for which Hartford has not been paid. Weston accepted the work performed by Hartford and gained the full benefit of Hartford's performance.

24. Under the equitable doctrine of *quantum meruit*, Hartford is entitled to recovery from Weston the fair value of the labor, materials and services provided by Hartford to Weston for which Hartford has not been paid.

COUNT III

25. Hartford hereby incorporates Paragraphs 1 through 24 above as if fully set forth herein.

26. The public bidding laws applicable to the Project require, among other things, that plans and specifications for such Project shall detail all labor and material to be provided thereunder.

27. Weston had the responsibility, oversight and control of the preparation of the designs of the work, and the plans and specifications for the Project which were intended to be complete, adequate, accurate, detailed and workable.

28. The Contract contained express and implied representations that such document was prepared with due care and in accordance with applicable law.

29. The Contract prepared and published by Weston did not conform to such express or implied representations.

30. Alexandra/Hartford substantially performed the work on the Project in accordance with the Contract, but Weston has failed and refused to pay for all work and extra work performed under the Contract.

31. As a consequence of changes, omissions, defects and misrepresentations in the Contract, and extra work Alexandra/Hartford was required to perform, Hartford incurred additional costs and expenses.

32. By reason of the foregoing, Weston has breached the Contract, the Performance Bond and the Takeover Agreement.

33. All condition precedent to maintain this action have been satisfied.

COUNT IV--DECLARATORY JUDGMENT

34. Hartford hereby incorporates Paragraphs 1 through 33 above, as if fully set forth herein.

35. Hartford states that a genuine controversy has arisen between Weston and Hartford as to the meaning, interpretation and application of the Contract, the Performance Bond and the Takeover Agreement and Hartford requests that this Court order, adjudge and declare that Hartford is entitled to receive payment for such amounts as have been wrongfully withheld by Weston.

WHEREFORE, Hartford demands that this Court order, adjudge and award a judgment in favor of Hartford against Weston as follows:

(a) Enter judgment in favor of Hartford against Weston for any amounts determined to be due Hartford.

(b) Enter judgment in favor of Hartford against Weston and award Hartford its damages for breach of contract by Weston and such further relief as the Court deems just and proper.

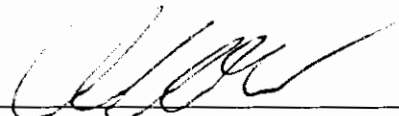
(c) Enter judgment in favor of Hartford against Weston and award Hartford the fair value of the work performed, and labor and material equipment and supplies furnished, and for the cost and expenses of this action.

(d) Enter a declaratory judgment, declaring the rights, responsibilities and liabilities of Hartford and Weston under the terms and conditions of the Contract, the Performance Bond and the Takeover Agreement.

(e) For such further relief as the Court deems just and proper under the circumstances and the applicable law.

(f) Award Hartford its costs and attorneys' fees in maintaining this action and for such other and further relief as the Court deems proper.

Respectfully Submitted,
**HARTFORD FIRE INSURANCE
COMPANY**
By its attorneys,



Bradford R. Carver, BBO #565396
CETRULO & CAPONE LLP
Two Seaport Lane, 10th Floor
Boston, MA 02210
Tel: (617) 217-5500
Fax: (617) 217-5200

Date: June 6, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Hartford Fire Insurance Company v. Town of Weston
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Bradford R. CarverADDRESS Cetrulo & Capone LLP, Two Seaport Ln., 10th Fl., Boston, MA 02210TELEPHONE NO. (617) 217-5500

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS**Hartford Fire Insurance Company**(b) County of Residence of First Listed Plaintiff **Hartford**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS**Town of Weston**County of Residence of First Listed Defendant **Middlesex**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF ☐ 1 DEF ☐ 1 Incorporated or Principal Place of Business In This State PTF ☐ 4 DEF ☒ 4
- Citizen of Another State ☒ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC §1332 28 USC §2201

Brief description of cause:

Declaratory Relief and Monetary Judgment sought re: breach of performance bond**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE